THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.18266 of 2006

18.9.2006

Between:

Smt.P.Atchamma, W/o.late P.Vengal Rao
And others

… Petitioners

AND

The Principal Secretary to Government of Andhra Pradesh,
Revenue Department, Secretariat, Hyderabad
And others

… Respondents

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.18266 of 2006

ORDER:

The petitioners herein purchased the land in survey Nos.190 to 192 under different sale deeds dated 09.1.1995 from M/s.K.Venkata Reddy and eight (8) others, who are allegedly successors in interest of one Sivaiah, who was original owner of the land. It is the case of the petitioners that the land admeasuring Acs.30.17 guntas in survey Nos.185 to 196 of Manikonda Village of Chevella Mandal in Ranga Reddy District is jagir land, that jagirdar was given pattadar rights under Section 172(2) of A.P. (Telangana Area) Land Revenue Act, 1317 Fasli, that after abolition of jagirdars by A.P. (Telangana Area) Abolition of Zagir Regulation, 1358 Fasli, the land was in possession of Syed Mohammed Hussain and that he was treated as pattadar in 1949. It is the further case of the petitioners that the legal representatives of pattadar sold certain extents of the land in survey No.194 in favour of Smt.N.Subbayamma and others under registered sale deeds, who in turn sold the property to one P.Vengala Rao. Kondakal Sivaiah and others, who are cultivating tenants in respect of the land in survey Nos.185 to 196 filed applications before the Revenue Divisional Officer, Chevella (RDO), for grant of patta certificates. Those applications were dismissed on 15.4.1981 by the RDO, but the Joint Collector allowed the appeal on 15.7.1991 and ordered to issue necessary certificates. Zainab Bi and others, the

legal heirs of original pattadar, filed appeal before the Commissioner of Survey, Settlements and Land Records, who allowed the matter on 26.9.1997 and remanded the case to the Joint Collector. By that time, the patta certificate issued to the petitioners' vendors by the Joint Collector was implemented and, therefore, the petitioners purchased the property from the legal heirs of Sivaiah.

The third respondent, namely, the Chief Executive Officer of A.P. State Wakf Board issued an errata notification of Dargah Hazrat Hussain Shah Wali, Manikonda Village, Rajendranagar Mandal(hereafter called, Dargah), declaring dry land as well as wetland admeasuring Acs.1654.32 guntas situated at Manikonda Village as service inam land. The land in survey Nos.191 and 192, which is declared dry land, and the land in survey No.194 are also included in the errata notification. The said notification dated 13.3.2006 published in A.P. Gazette dated 06.4.2006 is challenged in this writ petition.

Learned Counsel for the petitioners submits that there was considerable litigation between the legal heirs of original pattadar on one side and protected tenants on the other side before the Revenue Authorities and the matter was decided in favour of protected tenants, who were issued certificate of ownership, which was implemented. She also submits that the petitioners filed suit being O.S.No.536 of 1998 on the file of the Court of II Additional Senior Civil Judge, Ranga Reddy District, for perpetual injunction against their vendors and that by reason of the compromise between the legal heirs of the pattadar and the petitioners, the former executed ratification deed confirming the sale in favour of the petitioners, executed by the legal heirs of the protected tenant. She, therefore, submits that treating the land in survey Nos.191 and 192 as Dargah property as illegal and arbitrary. Nextly, it is contended that in the notification published earlier in 1989 the subject land was not shown as Darga property and all the revenue records including Khasra Pahany for the year 1954-1955 show the lands as patta lands. According to the learned Counsel, Dargah is actually has only 3165 Sq.yards and that the notification now issued is contrary to the counter affidavit filed by the District Collector in W.P.No.12617 of 2001, showing the land admeasuring Acs.1297.13 guntas in Manikonda Village as Government.

Learned Standing Counsel for A.P. Wakf Board appearing for the third respondent submits that when any question is raised regarding nature of the property whether or not it is a Wakf, or a dispute is raised

regarding list of Wakf, such a dispute can be resolved only by the Wakf Tribunal constituted under Section 83(1) of A.P. Wakf Act, 1995 (the Act, for brevity). Placing reliance on the decisions of two Division Benches of this Court in **M.Bikshapathi v Government of Andhra Pradesh**[1] and **Allauddin Charities and Zakath Wakf v Hameed Ali**[2], to which I was a member, learned Standing Counsel submits that the writ petition is not maintainable.

Section 6 of the Act is to the effect that if any question arises whether a particular property specified as Wakf property in the list of Wakf, is Wakf property or not, any person interested may institute a suit in Wakf Tribunal for the decision on the question. As per Section 7 of the Act, the Tribunal is vested with the jurisdiction to determine the disputes regarding the Wakfs. Further, under Section 83(2) of the Act, any person aggrieved by a decision or an order made under the Act or Rules, can file an application for decision before the Wakf Tribunal. Therefore, a writ petition raising the question as to whether a specified property is a Wakf or not, cannot be entertained. In **M.Bikshapathi** (supra), the Division Bench considered the scope of Sections 6 and 83 of the Wakf Act and laid down as under.

> Going by the principles of interpretation of a statute, a section should be read in a manner that both the sections should be operative so as to give effect to the intention of the Legislature. **It is discernible from reading Section 83 that the State Government can appoint a Tribunal for the determination of any dispute, question of any matter relating to wakf or wakf property under the Wakf Act and define the local limits, jurisdiction etc.** There is no dispute that the Wakf Tribunal has been constituted with such vast powers as envisaged by Section 83. Thus, the jurisdiction of the Wakf Tribunal cannot be limited by reading Section 6 alone providing for the decision to determine the nature of the wakf property i.e., to the effect whether it is a wakf property or not; whether it is a Shia Wakf or Sunni Wakf and who is the interested person who can institute a suit. Section 6 further specifies that the person interested shall, in relation to the property, include every person who though not interested in the wakf concerned, is interested in such property. We are of the considered view that reading both the sections together and permitting them to operate in their totality, it is within the jurisdiction of the Tribunal to determine whether the wakf property has been rightly leased or wrongly leased or any questions relating to wakf property. Consideration or non-consideration of the application of the appellant for leasing out the wakf property is within the purview of the Wakf Board and

any irregularity or illegality in its consideration is within the jurisdiction of the Tribunal.

(emphasis supplied)

In **Allauddin Charities and Zakath Wakf** (supra), this Court considered *inter alia* whether a writ petition is maintainable in relation to a dispute about the wakf property having regard to the provisions of Section 83(4) of the Wakf Act. After making a detailed reference to the relevant provisions of the wakf and other relevant precedents including **M.Bikshapathi** (supra), this Court held that, "when a question arises whether a specified property is wakf or not, any person interested may institute a suit in the Tribunal for the decision of the question. It is only after such decision is made, a person can approach the High Court under Section 83(9) of the Wakf Act". The relevant observations are as under.

> Under sub-section (5) of Section 83, the Tribunal constituted under sub-section (1) of Section 83 shall be deemed to be a civil Court and shall have the same powers as may be exercised by a Civil Court under the Code of Civil Procedure while trying a suit or executing a decree or order. The jurisdiction of the Civil Court is specifically barred under Section 85 of the Act. Therefore, when the Tribunal has been conferred with the power to determine any dispute, question or other matter relating to a Wakf or Wakf property under the Act and acts as a Civil Court for all purposes, this Court, in exercise of the jurisdiction under Article 226 of the Constitution, cannot permit a party to bypass such statutory remedy and assign itself the role of statutory authority or Tribunal by dealing with the disputed questions of fact or title. It is only after the issue or dispute is determined by the Tribunal at the first instance, the High Court, in exercise of the power under the proviso to sub-section (9) of Section 83 of the Act gets jurisdiction and can go into the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order it may think fit. We are, therefore, of the view that unless the party aggrieved of the orders of the CEO has availed of the alternative remedy available to him under the Statute and the Tribunal has determined the issue or dispute or the nature of the property as provided under the provisions of the Act, this Court, cannot go into question of validity of the orders passed by the Chief Executive Officer.

Following the decisions as above, this Court holds that the petitioners have effective alternative remedy and they can as well file a

suit before the Wakf Tribunal. The writ petition is not maintainable and is, accordingly, dismissed. No costs.

September 18, 2006. (**V.V.S.RAO, J**)
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[1] 1999 (6) ALD 270 (DB) = 2005 (2) ALT 271 (DB)

[2] 2002 (1) ALD 67 (DB)